IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-04-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

WRIT APPEAL NOs.955 to 959 OF 2001

R. Rajamani,
S/o.Ramasami Gounder .. Appellant in WA.955/01

R. Krishna Murthy .. Appellant in WA.956/01
S/o. Ramasamy Gounder

A. Andiappan
S/o. Andiappan Gounder .. Appellant in WA.957/01

Alagayee Ammal,
W/o. Palanisamy .. Appellant in WA.958/01

R.A. Ramasamy
S/o.A. Andiappan Gounder .. Appellant in WA.959/01

Vs.

1. The Government of Tamil Nadu,
   Rep. by the Secretary,
   Social Welfare Department,
   Fort St. George,
   Chennai 600 009.

2. The Special Tahsildar,
   Adi-Dravidar Welfare (L&A)
   Unit-2, Madurai. .. Respondents

For Appellants in all WAs : Mr.R. Balasubramanian
Senior Counsel for
Mr.s. Ramachandran

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For Respondent-1 : Mr.Edwin Prabhakar
Govt. Advocate

Respondent-2 : Mr. Anantha Narayanan

This Appeal under clause 15 of the Letters patent against the order dated 20.3.2001 in WP.Nos.19347/93, 2710 to 2713 of 1994 writ petitions filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari calling for the records pertaining to the proceedings of the Second respondent made in Award No.1/93-94 dated 17.9.1993 and to quash the same.

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J U D G M E N T

P.K. MISRA, J

The question raised in this appeal filed by the owners of the land against the common order passed by the learned single Judge in W.P.Nos.19347 of 1993, 2710 to 2713 of 1994, which had been filed for quashing the land acquisition proceedings, relates to applicability of the provisions contained in Section 11-A of the Land Acquisition Act.

2. Before considering the question, it is necessary to notice the relevant facts and circumstances:-

Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was published in the Gazette on 8.1.1986. Subsequently, after holding enquiry under Section 5A of the Act, declaration under Section 6 was notified in the Gazette on 22.1.1987. Publication was made in the newspaper on 23.1.1987 and the publication in the locality was made on 6.2.1987 and 9.2.1987. At that stage, the present appellants filed W.P.No.1583 of 1987 challenging the declaration under Section 6 of the Act. WMP.No.2409 of 1987 was filed seeking stay in such writ petition. Initially the High Court passed an order of stay on 20.2.1987 till 23.3.1987. The relevant portion of the order of the High Court is to the following effect :-

> "... it is ordered that all further proceedings in Section 4(1) notification issued by the 1st respondent in G.O.Ms.No.2591 S.W. dated 18.12.85 and published in the Government of Tamil Nadu Gazette dated 8.1.1987 be and hereby are stayed till 23.3.1987."

It seems thereafter the matter had not been listed nor any particular order was passed. Ultimately, however, the same miscellaneous petition was listed on 12.8.1987 and the following order was passed :-

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"The notice taken in the writ petition is that there is violation of Rule 3(b) of the Land Acquisition Rules. Number of writ petitions are pending on this issue. there will be stay pending disposal of the writ petition."

Ultimately the writ petition was taken up for final hearing and was dismissed by a learned single Judge by judgment dated 19.12.1991. The present appellant filed W.A.No.448 of 1992. In such appeal, an order of stay was passed on 20.4.1992 until further orders. Subsequently, the appeal was dismissed by order dated 13.6.1992. Thereafter the award was passed on 17.9.1993. On the basis of the aforesaid factual scenario, the appellants filed W.P.Nos.19347 of 1993 and 2710 to 2713 of 1994 for quashing the land acquisition proceedings mainly on the ground that the award had not been passed within two years from the date of publication of declaration under Section 6 as contemplated in Section 11-A of the Land Acquisition Act. Such writ petitions were taken up and ultimately a learned single Judge relying upon the decision reported in AIR 1997 SC 3474 (MUNICIPAL CORPORATION OF DELHI v. LICHHO DEVI AND OTHERS) dismissed the writ petitions by observing that the period during which stay was granted should be excluded and, therefore, it can be said that the award had been passed within two years. Such conclusion is under challenge in the present writ appeals.

3. Learned Senior Counsel appearing for the appellants has contended that the learned single Judge has erroneously assumed that stay was operative during the entire period when the writ petition and the writ appeal were pending, whereas there was no stay for a considerable length of time. It is submitted by him that while considering the period of stay, the period during which there was an actual order of stay should be excluded and not the entire period during which the writ petitions remained pending.

4. The learned single Judge had come to the following conclusion:-

"6. ... The total period of stay granted in the earlier writ petition as well as in the writ appeal is four years and seven months. But the period between the publication of declaration under Section 6 of the Act and the passing of the award is five years and eight months, and as per Section 11-A of the Act, if the period of stay granted in favour of petitioners is excluded, only a period of one year and one month remained without stay. In the circumstances, the learned Government Advocate submitted that within the stipulated period of two years from the date of dismissal of writ appeal, the award has

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been passed by the second respondent and there is no delay in passing the award."

5. Learned single Judge computed that the period of about 4 years and 7 months covered under the stay is to be excluded and since the period from the date of publication till the award made was 5 years and 8 months, excluding the period of 4 years and 7 months during the period in which stay was in operation, only one year and one month had elapsed and therefore it can be said that the award had been made within the stipulated period.

6. A careful perusal of the order passed by the learned single Judge indicates that the learned single Judge had calculated the period from 20.2.1987 to 23.3.1987, from 12.8.1987 to 19.12.1991 and from 20.4.1992 to 13.6.1992 as the period during which stay had been granted, which comes roughly to 4 years and 7 months. However, it appears that the learned single Judge has committed a clerical/arithmetic error in coming to the conclusion that the period between the last date of publication (9.12.1987) till the date of award (17.9.1993) was only 5 years and 8 months, whereas on calculation such period actually comes to about 6 years and 8 months. It is thus obvious that the award was passed beyond two years from the date of declaration and therefore the land acquisition proceedings got vitiated.

7. Faced with the aforesaid proposition, learned counsel appearing for the respondents submitted that as a matter of fact the entire period from 20.12.1987 till 19.12.1991 should be excluded as the stay was effective during the entire period and so calculated, it can be found that the award had been passed within two years. Learned counsel for the respondents submitted that even though initially the High Court had granted stay on 20.12.1987 till 23.3.1987, since stay was extended by order dated 12.8.1987 and continued till disposal of the writ petition, i.e., 19.12.1991, it must be taken that the period from 23.3.1987 till 12.8.1987 should also be computed as the period during which stay was operative. According to the learned counsel for the respondents, even though initially stay was till 23.3.1987, there was no subsequent order modifying or vacating such interim order of stay and on the other hand on the basis of the very same miscellaneous petition, stay was extended till 12.8.1987 and therefore in effect it must be taken that the entire period was under stay.

8. Learned Senior Counsel appearing for the appellant, on the other hand, has submitted that keeping in view the clear language used in Section 11-A, the period during which the stay order was actually operative should be considered and since no further order of stay was passed between 23.3.1987 and 12.8.1987, such period cannot be excluded from the calculation.

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9. The contentions raised by either side require careful consideration. Before doing so, however, it is necessary to notice the relevant provisions contained in the Act.

> "11-A. Period within which an award shall be made.- The Collector shall make an award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.
>
> Explanation.- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

10. Even though the language of the aforesaid provision appears to be simple, it appears that there has been a spate of decisions on such aspect. In AIR 1997 SC 2426 (L.N. VENKATESAN v. STATE OF TAMIL NADU AND OTHERS), it was observed that the proceedings of acquisition would not lapse even if the stay granted was regarding possession only and for the purpose of application of Explanation to Section 11-A, it was not necessary that the stay must be against the award and even if the stay was only against dispossession, such period of stay has to be excluded.

11. It appears that a similar view has been subsequently expressed in (2000) 4 SCC 322. Similar view seems to have been expressed in AIR 1997 SC 3472 and AIR 1998 SC 1608 and by the Madras High Court in 2000(II) CTC 597 (M. RAMALINGA THEVAR v. STATE OF TAMIL NADU AND OTHERS). However, the controversy in the present case does not revolve round the question as to whether stay of dispossession should be equated with stay of further proceedings. The question here is whether the period during which there was no express order of stay can be excluded on the footing that one of the parties, namely, the Land Acquisition Collector or even both the parties were under the impression that there was defacto stay.

12. The explanation to Section 11-A indicates that in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded. When stay is granted till a particular period and subsequently after lapse of time either a fresh order of stay is passed or

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previous interim order is continued, it cannot be said that the period during which there was no express order of stay, the stay was operative. This position becomes clear in view of the decision of the Supreme Court reported in (1996) 7 SCC 205 (N. RATHINASABAPATHY AND OTHERS v. K.S. PALANIAPPA KANDAR AND OTHERS).

In the said case, which arose out of an order passed by the High Court of Madras in contempt application, there was an order of interim injunction for three weeks. Subsequently, such interim injunction had not been extended nor there was any specific order vacating such interim injunction. After the expiry of such period of three weeks, the appellants before the Supreme Court proceeded with the construction and completed the same. However, the High Court held such appellants guilty of contempt by observing:-

> "In the instant case, the respondents waited for three weeks from the date of the order, after service of notice in this application and indulged thereafter in continuing the construction without giving any respect to the order of this Court, as if it had been effective only for the period of three weeks from the date of pronouncement of the order. This shows gross violation of the spirit and intention of the order culminating in the commission of court by the respondents herein."

Such matter was taken to the Supreme Court. The Supreme Court observed as follows :-

> "3. With respect to the High Court we find it difficult to comprehend how the blame could be laid at the doors of the appellants. There is no doubt that the operation of the injunction was limited to three weeks. It is nobody's case that it was extended thereafter. The appellants showed respect to the order of the Court by stopping the construction as soon as the injunction order was received. After the expiry of three weeks when they did not receive any order continuing the injunction, they proceeded with the construction. As such it is difficult to understand how it can be said that the appellants had shown disrespect to the order passed by the Court. On the contrary, they showed respect by not proceeding with the construction as soon as the injunctin order was received and they continued with the construction only after its period expired. Therefore, the High Court was wrong in stating that the appellants committed gross violation of the spirit and intention of the order "as if it had been effective only for a period of three weeks from the date of pronouncement of the order". There is no question of the order being in existence after the expiry of three weeks. The expression 'as if' used in

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the abstracted part of the order is totally unwarranted because indisputably, it was effective only for a period of three weeks. There was, therefore, absolutely no violation of the Court's order. We, therefore, fail to understand how the appellants can be hauled up for contempt under Section 12 of the Contempt of Courts Act. We are clearly of the opinion that there was no disrespect intended or shown and there was no contempt whatsoever. The impugned order of the High Court cannot, therefore, be allowed to stand."

13. What was stated by the Supreme Court in the context of an order of injunction is equally applicable to an order of stay. When an order of stay is passed until further orders, obviously such order of stay continues till a different order is passed modifying or vacating such stay order. Where, however, the stay order is passed only till a particular date and thereafter the stay order is not specifically extended either because the matter is not listed or even where the matter is adjourned, it cannot be said that in the eye of law the stay order initially granted is automatically renewed.

14. In 2002(2) CTC 55 (PADMASUNDARA RAO (DEAD) & OTHERS v. STATE OF TAMILNADU & OTHERS), it was observed :-

"11. It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing of period of limitation seems to be avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of Notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of Notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the Notification under Section 4(1) of the Act. The prescription of time limit in that background is, therefore, peremptory in nature. In Ram Chand and Others v. Union of India and Others 1994(1) SCC 44,it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non-est and was effaced. It is fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It

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is, however, contended that in a case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh Notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

...

14. ... Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case, 19963(3) SCC 88. In Nanjudaiah's case, 1996(3)SCC 88, the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by non-prescribed period. Same can never be the legislative intent."

Ultimately the view expressed in (1996) 3 SCC 88 (N. NARASIMHAIAH AND OTHERS v. STATE OF KARNATAKA AND OTHERS) and (1996) 10 SCC 691 (STATE OF KARNATAKA AND OTHERS v. D.C. NANJUDAIAH AND OTHERS) was overruled and the decision in (1995) 5 SCC 206 (OXFORD ENGLISH SCHOOL v. GOVERNMENT OF TAMILNADU AND OTHERS), was confirmed.

15. From the materials on record as well as the submissions made by the counsels for the parties, it is apparent that publication regarding declaration under Section 6 was made on 9.2.1987. As required under Section 11-A, award has to be made within two years from the date of publication of the declaration. It has been interpreted by the Supreme Court in (2003) 6 Supreme 410 (BIHAR STATE HOUSING BOARD v. STATE OF BIHAR & OTHERS) that the expression "date of publication of declaration" appearing Section 11-A has to be the last dates out of 3 modes of publication contemplated under Section 6. It is not disputed that 9.2.1987 is such last date. Therefore, the award has to be made in normal course on or before 9.2.1989 by calculating the period of two years from 10.2.1987. The award has been actually made on 17.9.1993. Therefore, the award has been 4 years, 7 months and 8 days after the stipulated period. From this 4 years, 7 months and 8 days, the period during which the said order was operative by virtue of the order of Court is required to be excluded by virtue of Explanation to Section 11-A. Such stay order was actually operative for a period of 32 days from 20.2.1987 till 23.3.1987, 4 years 130 days between 12.8.1987 to 19.12.1991 and 55 days for the period between

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20.4.1992 and 13.6.1992 i.e., for a total period of 4 years and 217 days. Four years period added to 9.2.1989 brings it upto 9.2.1993. From 10.2.1993 till 17.9.1993, the total period available is 220 days. The Government has taken a period of 220, out of which 217 days is covered under the stay. It thus appears that the award has been made three days beyond the stipulate period by excluding the period during which stay order was operative by virtue of order of the Court.

16. In view of the peremptory language under Section 11-A and in view of the decision of the Supreme Court already noticed, it is thus apparent that the land acquisition proceedings got lapsed by virtue of the fact that the award has not been made within the stipulated period of two years plus the period during which stay was by virtue of the order passed.

17. In such view of the matter, the writ appeals are bound to be allowed and the land acquisition proceedings are hereby quashed. However, since the quashing of the land acquisition proceedings is on account of the fact that the award has not been passed within the period of limitation, it would be always open to the concerned authority to take steps for acquisition of the land. This order will not stand in the way for acquiring the land in accordance with appropriate law, if there is necessity. There would be no order as to costs.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government,Government of Tamil Nadu,
   Social Welfare Department, Fort St. George,
   Chennai 600 009.

2. The Special Tahsildar,
   Adi-Dravidar Welfare (L&A)
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+ 1 cc to Mr. R. Balasubramanian, Advocate SR No. 29680/07

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COMMON JUDGMENT IN WA.Nos.
955 to 959 of 2001

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